Thiruchelvasegaram a/l Manickavasegar v Mahadevi a/p Nadchatiram

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2–23–04 OF 1997
KAMALANATHAN RATNAM JC
1 OCTOBER 1997

Civil Procedure *— Interim injunction to restrain publication of defamatory remarks — Whether ought to be granted — Serious question to be tried — Balance of convenience*

Tort *— Defamation — Injunction — Interlocutory injunction to restrain publication — Defendant referred to as person of low character and reputation — Whether injunction ought to be granted*

The parties were both advocates and solicitors and were related through marriage, the plaintiff having married the defendant's sister. The plaintiff contended that the defendant wrote a false and malicious letter to the plaintiff which was faxed to the plaintiff's firm. The plaintiff alleged that the letter indicated that the plaintiff committed incest with his daughter and was not fit to practise as an advocate and solicitor. The plaintiff further alleged that the defendant had on diverse occasions repeated the same defamatory remarks and conspired with his daughter and other members of the same family to defame and injure his standing with the sole purpose of forcing the plaintiff's wife to withdraw several legal suits. On 7 May 1997, the court granted an injunction to restrain the defendant or her servants or agents from publishing the libel and slander as set out in the amended statement of claim or such similar libel pending the trial of the matter and further granted a Mareva injunction to restrain the defendant from disposing of several assets as listed until disposal of the suit. After the granting of the said injunctive orders, the defendant applied for an injunction to prevent the plaintiff from slandering and using abusive words or making defamatory statements until the hearing of the suit. The defendant also sought a Mareva injunction and an Anton Piller order in aid of the Mareva injunction. The defendant contended that the plaintiff referred to her as a person of low character and reputation and that she was useless and a prostitute.

Held, granting the interim injunction:

(1) The matters complained of by the defendant were of a serious nature if proven true and the plaintiff merely denied uttering such slander. At this stage, there was no requirement to go into the merits of the case and for the moment, the court was satisfied that the allegations raised showed that there were serious issues to be tried. On this ground alone, the injunction to restrain the publication of such or similar defamatory remarks pending the hearing of the suit ought to be granted.

As the defendant had been restrained until trial from publishing any defamatory statements of the plaintiff, the balance of

convenience also favoured the granting of a similar injunction to restrain the plaintiff. A

Moreover, on considering the balance of convenience, the granting of the interlocutory injunction would not cause the plaintiff to suffer any prejudice or hardship but in the event the injunction was not granted the defendant would suffer irreparable damage which could not be adequately compensated with costs (see pp 528I and 529A–C). B

(2) The only ground relied on for the Mareva injunction was based on the inference that the plaintiff had been persistently consistent in his utterance of the slander and this evinced an intention of not wanting to pay, if found liable and a further inference that the plaintiff would dissipate his assets out of the jurisdiction. This was a long shot at obtaining a Mareva, suggestive of a remote chance, such as hazarding a highly improbable guess. Therefore, the court refused the prayer for the Mareva injunction and consequently the order for Anton Piller (see p 529E–G). C D

[Bahasa Malaysia summary

Pihak-pihak kedua-duanya peguambela dan peguamcara dan bersaudara melalui perkahwinan, di mana plaintif telah mengahwini adik defendan. Plaintif menghujahkan bahawa defendan telah menulis sepucuk surat yang palsu dan berniat jahat kepada plaintif yang difakskan kepada firma plaintif. Plaintif mengatakan bahawa surat itu menunjukkan bahawa plaintif telah melakukan perbuatan sumbang muhrim dengan anak perempuannya dan tidak layak membuka praktik sebagai seorang peguambela dan peguamcara. Plaintif seterusnya mengatakan bahawa defendan pada beberapa kali telah mengulang komen fitnah yang sama dan berkomplot dengan anak perempuannya dan ahli lain keluarga yang sama untuk memfitnah dan merosakkan kedudukannya dengan tujuan tunggal memaksa isteri plaintif menarik balik beberapa guaman undang-undang. Pada 7 Mei 1997, mahkamah membenarkan satu injunksi bagi menahan defendan atau pekerja atau ejennya daripada menerbitkan libel dan slander seperti yang dinyatakan dalam pernyataan tuntutan terpinda atau libel yang seumpamanya sementara menunggu perbicaraan hal itu dan selanjutnya membenarkan injunksi Mareva untuk menahan defendan daripada melupuskan pelbagai aset seperti yang disenaraikan sehingga penyelesaian guaman. Selepas membenarkan perintah-perintah injunksi tersebut, defendan memohon injunksi untuk menghalang plaintif daripada menslander dan menggunakan kata-kata kesat atau membuat pernyataan fitnah sehingga pembicaraan guaman. Defendan juga meminta injunksi Mareva dan satu perintah Anton Piller bagi membantu injunksi Mareva. Defendan menghujahkan bahawa plaintif merujuk kepadanya sebagai seorang yang mempunyai maruah dan reputasi rendah dan bahawa dia tidak berguna dan adalah seorang pelacur. E F G H I

Diputuskan, membenarkan injunksi interim:

(1) Hal yang diadu oleh defendan adalah bersifat serius sekiranya dibuktikan benar dan plaintif menafikan pernah melafazkan slander itu. Di peringkat ini, tiada keperluan untuk meneliti merit kes dan buat masa ini, mahkamah berpuas hati bahawa pengataan yang dibangkitkan menunjukkan bahawa terdapat isu serius untuk dibicarakan. Atas alasan ini sahaja, injunksi untuk menahan penerbitan komen demikian atau yang serupa dengannya sementara menunggu pembicaraan guaman patut dibenarkan.

Oleh kerana defendan telah ditahan sehingga perbicaraan daripada menerbitkan apa-apa pernyataan fitnah tentang plaintif, imbangan kemudahan juga memihak kepada pemberian injunksi yang serupa bagi menahan plaintif.

Tambahan pula, dengan mempertimbangkan imbangan kemudahan, pemberian injunksi interlokutori tidak akan menyebabkan plaintif mengalami sebarang kemudaratan atau kesulitan tetapi andainya injunksi tidak diberikan defendan akan mengalami kerosakan yang tidak boleh dibaiki yang tidak boleh dipampas secukupnya dengan kos (lihat ms 528I dan 529A–C).

(2) Satu-satunya alasan yang diharapkan untuk injunksi Mareva adalah berdasarkan inferens bahawa plaintif tetap konsisten dalam pelafazan slander dan ini membangkitkan hasrat tidak ingin membayar, andainya didapati bersalah dan inferens lanjut bahawa plaintif akan melupuskan aset-asetnya di luar bidang kuasa. Ini cumalah percubaan untuk mendapatkan Mareva, yang mencadangkan peluang yang sungguh tipis, bagaikan mencuba mengagak sesuatu yang tidak mungkin. Maka, mahkamah menolak permohonan untuk injunksi Mareva dan berikutnya perintah untuk Anton Piller (lihat ms 529E–G).]

Notes

For cases on injunction, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1425–1725.

For cases on defamation, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 138–261.

RS Sodhi (*Mahadevi Nadchatiram* and *Shanti T* with him) (*Mahadevi Nadchatiram & Partners*) for the applicant/defendant.

M Thiruchelvasegaram (*Syarikat M Segaram*) for the respondent/plaintiff.

Kamalanathan Ratnam JC:

Background facts

(a) The libel

The plaintiff and defendant are both advocates and solicitors of the High Court of Malaya. They are both related through marriage. The plaintiff

had married the defendant's sister. There are two children of the marriage both of whom are also advocates and solicitors of the High Court of Malaya; but it is only the daughter, Shanti, who is involved in this suit.

The plaintiff contends that the defendant wrote of him falsely and maliciously a letter, and which was faxed to the plaintiff's legal firm. The relevant contents of the said letter are as follows:

> Our client further wishes to inform you that it is your daughter who goes round making allegations against you and in fact she wanted to lodge a police report against you and our client stopped it.
>
> Our client states that she is very embarrassed that you are a source of disgrace to the family and to her and she wonders how you manage to walk around and our client has even stopped taking cases and going to court because of you. You were a source of embarrassment in London and you are now continuing it here and further her tuition money was used by Vijayalakshmi to clothe and educate you in London.
>
> Our client wants you to take the Mahabharat and read it. Our client feels that you are a reincarnation of Duryodhana who was so lustful and greedy that the whole of the Kuru dynasty was destroyed. Similarly your whole family will be destroyed.
>
> Please go to the temple and start praying. There is no smoke with fire.

The said letter was written by the defendant's firm acting for the defendant, and sent to the plaintiff.

The plaintiff interpreted the said letter to mean, inter alia, that he had committed incest with his daughter and that he was unfit to practice his profession as an advocate and solicitor. The plaintiff contended that the defendant had on diverse occasions repeated the said libel or similar libel to her brothers and sisters and other relatives and lawyers.

(b) Seremban High Court Civil Suit 22–61–93 ('the Seremban suit')

In this suit filed by Vijayalakshmi Devi d/o Nadchatiram, Dr Mahadevan a/l Nadchatiram and Datin Seri Danapakia Devi d/o Nadchatiram against Jegadevan s/o Nadchatiram, Mahadevi d/o Nadchatiram and Suseela Devi d/o Nadchatiram, the said Mahadevi d/o Nadchatiram (who is the defendant in the suit before me) had filed a written submission in which she is reported to have said as follows:

> If ever these proceedings were instituted, it was all done by Thiruchelvasegaram, the first plaintiff's husband, for he has been deprived of his daughter with whom he is intensely in love and the daughter cannot stand or bear his sight. Even recently, he requested as a precondition to withdraw all cases and sent a message through the second plaintiff to the second defendant that his daughter be sent back.
>
> The first plaintiff's husband is a slimy creep and an incestuous bastard for having been caned by the first defendant for his immoral activities against his daughter, he is now using the court as a medium to take his revenge against the first defendant. Should the court waste time unnecessarily? The poor child, how much mental agony she has undergone? Believe me my Lord this is the truth.

On the application of the plaintiff, the learned judge ordered the said words to be deleted and expunged from the submission. The plaintiff was never a party to the Seremban suit but the first plaintiff in the Seremban suit is the wife of the plaintiff herein.

(c) Allegation of conspiracy

The plaintiff further contended that the defendant in conspiracy with his daughter and other members of the family had defamed and injured him in his standing and profession with the sole motive of forcing the plaintiff's wife to withdraw all actions filed by her for and on behalf of Nadchatiram Realities (1960) Sdn Bhd (in liquidation). The plaintiff therefore claimed aggravated or exemplary damages, an injunction to restrain the defendant by herself from further publishing the said or any similar libels and slanders and an order for costs.

Plaintiff's application for injunction

The plaintiff then filed an application for an injunction to restrain the defendant or her agents from publishing any libel or slander until the conclusion of the trial of this action. He also applied for a Mareva injunction to restrain the defendant from disposing of any of her assets to the value of RM15m and costs. This application (encl 5) was hotly contested and after hearing submissions I made an order on 7 May 1997 as follows:

(1) An interlocutory injunction restraining the defendant or her agents or servants from publishing the libel and slander as set out in the amended statement of claim or such similar libel, pending the trial of this suit or until further order.

(2) As regards the Mareva injunction the defendant was restrained from disposing of the following assets until the hearing and disposal of this suit, namely:

(a) the three-bedroom condominium named Tivoli Villas;

(b) the double storey shophouse in Pudu; and

(c) the land in the Lake Gardens.

(3) Costs of this application to the plaintiff.

There was no appeal by either party against this order.

The defendant's application for an injunction

After I had made the order dated 7 May 1997, the defendant filed on an application (encl 23) for an injunction to restrain the plaintiff from slandering and using abusive words in any form or making defamatory statements of the defendant until the hearing of the suit. She also applied for a Mareva injunction to restrain the plaintiff from disposing of his assets up to a value of RM20m and an Anton Piller order in aid of the Mareva injunction ordering the plaintiff to disclose in a list, his assets both moveable and immovable which are held in the plaintiff's name and for costs. There was also a prayer against the plaintiff's wife and son but this was withdrawn on the hearing date as the wife and son were not parties to the application.

Court's findings

The defendant referred me to the amended counterclaim wherein the defendant had given particulars of the incidents of slander in the amended counterclaim. In para 2, the plaintiff is alleged to have said of the defendant as follows:

> Mahadevi goes to India and brings back charm from India and gives it to my daughter to eat and that is why my daughter is not returning home.
>
> She spends every evening dabbling in witchcraft and she is a witch. No one should eat from her hands or look into her eyes. She will hypnotize you.

The said words were alleged to have been uttered to one Maheson, Datin Seenivasam and to friends and relatives.

In para 9, the defendant contends that the plaintiff spoke to one Acharya Mahamandeleswarar Brahmarishi Rasanandji and one Aktar Hussin the following defamatory words:

(a) Mahadevi has kidnapped Shanti.

(b) Mahadevi has used mantra, bomoh charm and witchcraft on Shanti.

(c) Mahadevi is a bad influence on Shanti.

(d) Mahadevi is a prostitute, low character, sexually abuses people, should not be allowed in the religious institution belonging to Swamiji because she is a bad influence.

In para 16, the plaintiff is alleged to have referred to the defendant as 'vesai' and 'parachi' whenever he walked by her in the court premises. This was uttered in the presence of Indian lawyers and Shanti. The words 'vesai' and 'parachi' meant that the defendant was a person of low character and reputation.

In para 19, the plaintiff is alleged to have said of the defendant, to the defendant's clients, the following words:

> Mahadevi is a useless lawyer. She is a prostitute.

Injunction to restrain

In order to succeed in an interlocutory application, the defendant must show that the claim as set out in the defendant's counterclaim raises serious questions to be tried, whether the balance of convenience lies in favour of granting the injunction and whether the plaintiff would be adequately compensated by the defendant's undertaking as to damages.

As this stage, I do not have to go into the merits of the case. The defendant has given particulars of the incidents of slander in the paragraphs which I have alluded to earlier. Both are advocates and solicitors and have a reputation to maintain. The matters complained of by the defendant are of a serious nature if proved true. The plaintiff merely denies uttering the said slander and states that the same is untrue and baseless and contends that these allegations emanated from the defendant's fertile imagination. That might be so; but for the moment, I am satisfied that the allegations raised show that there are serious issues which ought to be tried. After all,

A the defendant will have to subpoena the relevant witnesses to show that the slander was in fact published. On this ground alone, I ought to grant the injunction to restrain the publication of such or such similar defamatory statements pending the hearing of the suit. I am also of the view that just as I had restrained the defendant until trial of publishing any defamatory statements of the plaintiff, the balance of convenience also lies in favour of B granting a similar injunction to restrain the plaintiff. In also considering the issue of balance of convenience, I am satisfied that by granting this interlocutory injunction, the plaintiff will not suffer any prejudice or hardship, but in the event the injunction is not granted, the defendant will suffer irreparable damage that cannot be adequately compensated with costs.

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Mareva injunction and the Anton Piller order

The defendant argued that by repeatedly speaking defamatory words, the plaintiff had shown a desire not to want to satisfy any judgment. Therefore, naturally he would want to frustrate payment and would therefore remove D the assets out of the country. It was also pointed out to me that the plaintiff had not shown he would suffer any hardship if such orders are made. After all, if the plaintiff wanted to dispose of any assets, he could still come to court to ask to vary the Mareva injunction. It would seem that the only ground relied on by the defendant to seek the Mareva injunction is based on the inference that since the plaintiff has been persistently consistent in E his utterances of slander, this evinces an intention of not wanting to pay, if found liable, and which therefore calls for the further inference that the plaintiff would spirit away his assets out of the jurisdiction of this court. This to my mind is a long shot at obtaining a Mareva, suggestive of a remote chance, such as hazarding a highly improbable guess. I find that F where the conduct is capable of also being interpreted as a challenge to the defendant, in other words, where the conduct of the plaintiff is capable of having an alternative interpretation, the onus is on the applicant/defendant to prove her claim. I therefore refused the prayer for the Mareva injunction and consequently the order for Anton Piller.

G In the exercise of my discretion I awarded half costs only to the applicant in respect of this application.

Order accordingly.

Reported by Lew Chee Seong

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